THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION Nos.14632 & 18685 OF 2005

Dated 7th December 2005

Between:

K.Pitcheswara Rao S/o.K.Venkata Ratnam

…Petitioner

And

United India Insurance Co.Ltd.,

Rep.by its Chairman & Managing Director,

Chennai & others.

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION Nos.14632 & 18685 OF 2005

COMMON ORDER:

The petitioner is employed as Assistant Administrative Officer in the United India Insurance Company Limited, first respondent herein. He submitted an application on 13.2.2004, seeking voluntary retirement, in terms of the scheme introduced by the Government of India, through notification dated 1.1.2004. The second respondent rejected the application of the petitioner, through order dated 19.5.2005. The same is challenged in W.P.No.14632 of 2005.

The petitioner was issued a charge memo dated 25.7.2005, alleging that the petitioner remained absent unauthorisedly, from 1.6.2004 to 14.7.2005, for a period

of 409 days. The petitioner was required to submit explanation, as to why suitable disciplinary action should not be taken against him. W.P.No.18685 of 2005 is filed against the charge memo.

The petitioner was transferred from Vijayawada to Srikakulam, through orders dated 28.4.2003. However, he was relived from the office at Vijayawada on 31.10.2003. Petitioner states that on account of serious domestic problems, it is not possible for him to join at the new station. According to him, he availed the benefit of voluntary retirement, mainly on account of his inability to move out of Vijayawada. He states that the second respondent issued a show-cause notice, and imposed the punishment of reduction of scale of pay, through order dated 20.9.2004, and in spite of the same, another round of disciplinary proceedings is initiated for the same lapse. The petitioner assails the action of the respondents, in rejecting the application for voluntary retirement, on several grounds. It is pleaded that no reasons were indicated in it, and that it runs contrary to the judgment of the Supreme Court in ***MANJUSHREE PATHAK V. THE ASSAM INDUSTRIAL DEVELOPMENT CORPORATION LTD***.

The respondents filed counter affidavit, narrating the circumstances, under which the second round of disciplinary proceedings came to be initiated against the petitioner, as well as the order of rejection of his application for voluntary retirement came to be passed. It is stated that though the petitioner was given adequate opportunity to join at the transferred place, he remained adamant, and despite imposition of penalty of reduction of pay scale, he did not move out of the existing place. It is urged that the respondents have the discretion, either to accept or reject the request for voluntary retirement, and the petitioner cannot claim the same, as of right.

Sri S.Satyam Reddy, learned counsel for the petitioner, submits that the petitioner is being punished twice, for the same cause, *viz*. refusal to move out of the existing station. He submits that the discretion vested in the respondents, in the matter of acceptance of application for voluntary retirement, is not absolute, and it is circumscribed by the corresponding right of the employee. He places reliance upon

MANJUSHREE PATHAK's case (supra).

Learned Standing Counsel for the respondents submits that in spite of an opportunity being given to the petitioner, to join at the new place, he did not avail the same. It is pleaded that the petitioner remained absent, even after imposition of the penalty, and an effort is made to sustain the order of rejection.

The grievance of the petitioner is two fold. The first is in relation to initiation of disciplinary proceedings, and the second is as regards the rejection of his request for voluntary retirement.

So far as the first aspect is concerned, it needs to be seen that the proceedings are at the stage of issuance of charge memo. The petitioner has to submit explanation to the charge memo. The result of the proceedings would depend upon the nature of explanation that may be submitted by the petitioner, and its consideration by the respondents. The petitioner is not able to show, as to how the charge memo is illegal or arbitral. The question as to whether there was any justification, on the part of the petitioner in remaining absent for the period indicated, needs to be considered, at the stage of enquiry. Therefore, this court is not inclined to interfere with the same.

The second limb of the grievance of the petitioner is about the rejection of his application for voluntary retirement. The scheme is comprehensive and is almost a self-contained code. It prescribes the eligibility criteria, period of operation, nature of benefits, manner of consideration, mode of disposal of the applications, etc. There cannot be any doubt that the employees, who are covered by the scheme, derive a valuable right under it. Such rights can be denied, only for valid grounds, to be stated in writing. It is a requirement under Administrative Law. Apart from that, clause-8 (vii) of the Scheme mandates that the competent authority shall record the reasons for rejection of the application for voluntary retirement, in writing. It reads as under:

"**Caluse-8 (vii)**. The Competent Authority shall have absolute

> discretion either to accept or reject the application of an employee under this scheme. The Competent Authority shall record the reasons for rejection of his/her application in writing. Acceptance or rejection of the application of an employee for voluntary retirement under the scheme shall be communicated to him or her in writing."

The basis for such requirement is that the employee would be in a position to know, as to what exactly prompted the employer to reject the application. Such being the requirement under law, as well as Scheme, the respondents did not indicate even a semblance of reasoning in their proceedings, dated 19.5.2005. The operative portion of that order reads as under:

> "After examining the facts and circumstances connected with the matter, the Competent Authority has rejected your application for Special Voluntary Retirement under the provisions of GIOSVR Scheme 2004."

This hardly constitutes compliance with the requirement in law, as well as clause-8 (vii) of the Scheme. On this short ground, the order dated 19.5.2005 is liable to be set aside.

It is true that in ***MANJUSHREE PATHAK's*** case (supra), the Supreme Court held that the employee has a right to be considered under the scheme, and if there did not exist any ground for the rejection of the same, as on the date of application, the subsequent developments cannot constitute the basis for rejection of the application. In the instant case, the application has been rejected, and thereafter, punishment came to be imposed upon the petitioner. The question as to what weighed with the respondents, in rejecting the application, can be discernable, if only the reasons were stated in the impugned order. Therefore, this Court is not inclined to grant the relief, straight away, directing the respondents to accept the claim of the petitioner. It is for the respondents to consider the same, duly taking the relevant aspects, into account.

For the foregoing reasons, the writ petitions are disposed of, directing that;

a. the order, dated 19.5.2005, shall stand set aside, and the respondents

shall consider the matter, afresh, duly taking the reasons, offered by the petitioner for seeking voluntary retirement, into account, before they pass orders.

b. The proceedings, in pursuance of the charge memo dated 25.7.2005, shall be resumed, only after the petitioner is communicated the result of his application for voluntary retirement.

There shall be no order as to costs.

7th December 2005

Note: Issue C.C. in three days.

(B/o)

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